

SUBCHAPTER 15. FINANCIAL RESPONSIBILITY REQUIREMENTS

7:14B-15.1 Applicability and general requirements

(a) This subchapter sets forth financial responsibility assurance requirements for owners and operators of underground storage tank systems for the purpose of remediation and for compensating third parties for bodily injury and property damage as a result of a discharge from an underground storage tank system.

(b) Owners and operators of Federally regulated systems subject to 40 C.F.R. Part 280 Subpart H shall comply with this subchapter by maintaining financial assurance pursuant to 40 C.F.R. Part 280 Subpart H incorporated, in its entirety, by reference.

(c) Within 120 days after (the effective date of this rule), the owner or operator of an underground storage tank system subject to the requirements of N.J.A.C. 7:14B, not covered by (b) above, shall comply with this subchapter for the amounts listed in N.J.A.C. 7:14-15.2 by maintaining financial assurance pursuant to USEPA's Financial Responsibility Regulations at 40 CFR 280 Part H incorporated by reference, with the noted exclusions at N.J.A.C. 7:14B-15.3(c).

(d) State and Federal government entities whose debts and liabilities are the debts and liabilities of the State of New Jersey or the United States are exempt from the requirements of this subchapter.

(e) If the owner and operator of an underground storage tank system are separate persons, only one person is required to demonstrate financial responsibility; however, both the owner and operator are responsible in the event of noncompliance.

(f) The owner and operator may use separate mechanisms to satisfy the requirements of N.J.A.C. 7:14B-15.2 for different underground storage tank systems; however, the annual aggregate required shall be based on the number of tanks covered by each separate mechanism.

(g) The owner and operator is no longer required to maintain financial responsibility assurance for any underground storage tank system when the Department has provided the owner or operator with the following:

1. A no further action letter for the closure of the underground storage tank system; and
2. Notice that each third-party claim for damages as a result of a discharge from the underground storage tank system has been resolved pursuant to 40 C.F.R. 280.112 as adopted by reference at N.J.A.C. 7:14B-15.3, if one has been filed.

(h) The owner and operator shall identify the financial assurance mechanism being used to comply with this subchapter on the New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.2(d)5 and shall maintain evidence of financial assurance at the site and at the owner or operator's place of business. An owner or operator shall submit to the Department evidence of financial assurance with any supporting documentation, pursuant to a request by the Department.

(i) Within 30 calendar days after the cancellation or expiration of any form of financial assurance established to meet the requirements of this chapter, the issuing financial institution shall notify the Department in writing of the expiration or cancellation. The financial institution shall include in the notification the name of the insured policy holder, the policy number as applicable and the address of all sites covered by the financial mechanism. The written notification shall be sent to the address below:

New Jersey Department of Environmental Protection
Division of Remediation Management and Response
Bureau of Fund Management, Compliance & Recovery
PO Box 028
401 East State Street
Trenton, NJ 08625-0028

Attn: Registration and Billing Unit

7:14B-15.2 Amount and scope of required financial responsibility

(a) Owners and operators shall maintain financial responsibility assurance for regulated underground storage tank systems in the per-occurrence amounts as follows:

1. For petroleum underground storage tank systems located at petroleum marketing facilities, or facilities that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year:

\$1,000,000;

2. For all other petroleum underground storage tanks: \$250,000; and

3. For underground storage tanks systems containing hazardous substances other than petroleum: \$1,000,000.

(b) Owners or operators shall maintain financial responsibility assurance for regulated underground storage tank systems in the annual aggregate amounts as follows:

1. For 1 to 100 underground storage tanks: \$1,000,000; and

2. For 101 or more underground storage tanks: \$2,000,000.

(c) Owners and operators shall review the amount of per-occurrence and aggregate assurance needed whenever they acquire or install additional underground storage tanks to ensure the amount of financial responsibility assurance required at (a) and (b) above are maintained.

(d) If an adjustment in the amount of financial responsibility assurance is required pursuant to (c) above, the owner and operator shall demonstrate the adjusted amount

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within 30 calendar days after the tank acquisition or installation by submitting to the Department an amended New Jersey Underground Storage Tank Facility Certification Questionnaire in accordance with N.J.A.C. 7:14B-2.4.

7:14B-15.3 Incorporation of the Code of Federal Regulations by Reference

(a) Unless specifically excluded by these rules, when a provision of the Code of Federal Regulations (C.F.R.) is incorporated by reference into this rule, all notes, comments, appendices, diagrams, tables, forms, figures, and publications are also incorporated by reference.

(b) Owners and operators of Federally regulated underground storage tank systems subject to 40 C.F.R. Part 280 Subpart H shall comply with this subchapter by maintaining financial assurance pursuant to 40 C.F.R. Part 280 Subpart H incorporated, in its entirety, by reference into this rule.

(c) Owners and operators of State regulated underground storage tank systems subject to the requirements of N.J.A.C. 7:14B, but not covered by (b) above, shall comply with this chapter for the amounts listed in N.J.A.C. 7:14-15.2 by complying with USEPA's Financial Responsibility Regulations at 40 CFR 280 Part H incorporated by reference into this rule with the following noted exclusions:

1. 40 CFR 280.98, Surety Bond;
2. 40 CFR 280.100, Use of State required mechanism;
3. 40 CFR 280.101, State fund of other State assurance; and
4. 40 CFR 280.106(d), Local government guarantee, Local Government Guarantee With Standby Trust Made by a State.

(d) For the purposes of this subchapter, when the term, “name of State” appears in the Federal rule, it shall be replaced with the term “New Jersey”; when the term “State implementing agency” appears in the Federal rule, it shall be replaced with the term “Department of Environmental Protection”; when the term “Director” or “Director of the implementing agency” appears in the Federal rule, it shall be replaced with the term “DEP Commissioner.”

(e) Prospective incorporation by reference means the ongoing process, beginning (the adoption date) whereby all provisions of regulations incorporated into this subchapter from the Federal regulations at 40 CFR 280 Part H are continually automatically updated in order to maintain consistency with the most current Federal rules. Thus, any supplements, amendments, and any other rule changes including, without limitation, repeals or stays that affect the meaning or operational status of a Federal rule, brought about by either judicial or administrative action and adopted or otherwise noticed by U.S. Environmental Protection Agency in the Federal Register, shall simultaneously amend this subchapter so this subchapter has the same meaning and status as its Federal counterpart.

(f) Provisions of 40 C.F.R. Part 280 Subpart H incorporated by reference are prospective and all internal references contained therein are also incorporated prospectively for the purposes of that provision, unless otherwise noted. Each internal reference to the Federal register shall be interpreted to include, in addition to the Federal citation, any changes, additions and deletions made to that citation by N.J.A.C. 7:14B-15.

(g) Provisions of 40 C.F.R. Part 280 Subpart H that are excluded from incorporation by reference in these rules are excluded in their entirety, unless otherwise specified. If there is a cross reference to a Federal citation that was specifically excluded from incorporation, the cross referenced citation is not incorporated by virtue of the cross reference. Provisions that have been excluded from incorporation by reference are also excluded from the process of prospective incorporation by reference.

(h) Nothing in these provisions incorporated by reference from the Federal register shall affect the Department's authority to enforce statutes or rules, permits or orders administered or issued by the Commissioner.

(i) New Federal rules, amendments, supplements and other changes at 40 CFR 280 Part H brought about through administrative or judicial action adopted or otherwise noticed by USEPA in the Federal Register shall be automatically incorporated through the prospective incorporation process in N.J.A.C. 7:14B.

(j) New Federal rules, amendments, supplements and other changes at 40 CFR 280 Part H brought about through administrative or judicial action adopted or otherwise noticed in the Federal Register by USEPA after January 26, 1998 but prior to (the effective date of this rule) shall be prospectively incorporated by reference and shall be effective on (the effective date of this rule) and operative on (effective date of this rule plus 90 days); or on the operative date cited by USEPA in the relevant Federal Register Notice, whichever is later, unless the Department publishes a notice of proposal repealing the adoption of the Federal rule in New Jersey in whole or in part, and/or proposes to otherwise amend the affected State rules.

(k) On or after (effective date of this rule), new Federal rules, amendments, supplements and other changes brought about through administrative or judicial action and adopted or otherwise noticed by USEPA in the Federal Register automatically incorporated through the prospective incorporation by reference process shall be effective upon publication in the Federal Register and operative on the date cited by USEPA in the relevant Federal Register Notice, unless the Department publishes a notice of proposal repealing the adoption in New Jersey of the Federal regulation in whole or in part, and/or proposing to otherwise amend the affected State rules.

7:14B-15.4 Document availability

(a) Copies of the 40 CFR 280 Part H as adopted and incorporated by reference herein are available for review. Publications incorporated by reference within the Code of

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Federal Regulations as listed at 40 CFR 280 Part H, or the most currently available version, are also available for review. The Federal rule can be accessed through a hyperlink provided on the Department's internet web page at www.state.nj.us/dep/srp/regs/ust. These publications may also be reviewed by contacting the Department at:

New Jersey Department of Environmental Protection
Site Remediation Program
PO Box 028
Trenton, NJ 08625-0028
Telephone: (609) 633-1408

(b) Copies of 40 CFR 280 Part H as adopted and incorporated by reference herein, may be purchased from the following sources:

U.S. Government Printing Office
Superintendent of Documents
Mail Stop: SCOP
Washington DC 20402-9328

U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, NY 10278-0081

U.S. Government Printing Office Bookstore
Robert Morris Building
100 North 17th Street
Philadelphia, PA 19103

(c) Copies of 40 CFR 280 Part H as adopted and incorporated by reference herein, are available for review at the following public libraries:

New Jersey State Library
PO Box 520, 185 West State Street
Trenton, NJ 08625-0520

Newark Public Library
5 Washington Street
Newark, NJ 07101

(d) The Office of the Federal Register, a component of the National Archives and Record Administration, has a web-site at www.nara.gov/fedreg which shows a current listing of files available for public inspection, Federal Registers as well as the Code of the Federal Regulations.